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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON GUTIERREZ,

Defendant and Appellant.

E063150

(Super.Ct.No. FWV1404891)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Aaron Gutierrez was sentenced to serve an additional two years in prison after he pled guilty to attempted possession of a controlled substance while incarcerated. We affirm the conviction and sentence.

FACTS AND PROCEDURE

On July 19, 2014, a correctional officer at the California Institution for Men at Chino saw defendant standing in his cell holding what appeared to be a small pen. Defendant's cell mate was asleep on the lower bunk. The officer told defendant to put down the pen; defendant complied. The officer patted down defendant and the cell mate, found nothing, and then escorted them away to a secure room. He returned to the cell and found the item defendant had put down. It appeared to be an inmate manufactured syringe with a small amount of blood inside. The officer found on the top bunk a spoon, razor blade and what looked like a shrink-wrapped piece of paper containing heroin.

Defendant stipulated that the substance was tested and determined to be .017 grams of heroin.

On December 31, 2014, the People filed an information alleging in count one that defendant possessed a controlled substance while incarcerated (Pen. Code, § 4573.6)¹ and in count two that he possessed drug paraphernalia while incarcerated (§ 4573.6). The People also alleged defendant had a prior strike conviction (§§ 667, subds. (b)-(i) and 1170.12, subds. (a)-(d)) and had a prior prison term conviction (§ 667.5, subd. (b)).

On January 9, 2015, the People amended the information to allege a new count three, attempted possession of a controlled substance while incarcerated (§§ 664, 4573.6). Also on that date defendant pled guilty to count three and admitted the prior strike conviction. The remaining counts and prison term enhancement were dismissed. The

¹ All section references are to the Penal Code unless otherwise indicated.

court sentenced defendant as agreed to the low term of one year for the attempt, doubled for the prior strike.

This appeal followed.

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. Defendant filed a two-page letter of argument in which he very politely argues that two years in prison is an excessive sentence for attempted possession of such a small amount of heroin. Defendant asks to be given a lesser amount of time, considering that he has already spent 13 years in prison. Defendant argues it is unfair that he receive such a harsh sentence simply because he possessed the heroin while incarcerated, whereas he would have received a much lesser punishment if he had possessed the heroin while not incarcerated. However, section 4573.6 is deemed necessary by the Legislature to deter the use of illegal drugs in custodial institutions, at least in part to ensure ““orderly administration and security”” in these institutions. [Citation.] (*People v. Harris* (2006) 145 Cal.App.4th 1456, 1461.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment of conviction and sentence are affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.